

OPEN AND SHUT?

Sunday, April 19, 2009

Intellectual Property, Open Access, and the Developing World

The conventional view is that intellectual property is a "bad thing" for the developing world, since it primarily (if not exclusively) benefits the developed world, often at the expense of the developing world.

The conventional view is that the developing world has more (or at least as much) to gain from Open Access as has the developed world.

Recently I was contacted by Kay Chapman from the Central Advisory Service on Intellectual Property (CAS-IP) — the IP advisory group to the Consultative Group on International Agricultural Research (CGIAR).

The mission of CGIAR is "to achieve sustainable food security and reduce poverty in developing countries through scientific research and research-related activities in the fields of agriculture, forestry, fisheries, policy, and environment."

So I asked Kay if she could write something outlining the main challenges that IP poses for the developing world, and what is being done about it. She agreed and — with her colleagues Dr Victoria Henson-Apollonio and Sebastian Derwisch — produced the text below.

On reading it I was reminded once again that the world is always more complicated than we think.

Some IP challenges in the developing world; and what is being done.

The business of the CGIAR's, Central Advisory Service on Intellectual Property (CAS-IP), is to assist with effective IP & technology transfer management within the context of agricultural development, to benefit the world's poor.

One of the challenges we face on a regular basis is explaining to people what we do and how it matters for small-holder, resource-poor farmers. And this is symptomatic of intellectual property (IP) management in the developing world. There are no easy answers.

Dr Victoria Henson-Apollonio



If we think of IP issues in terms of "formal" and "informal" IP, then under the "formal IP" category falls patents — patent rights, trademarks, [geographic indications](#), copyrights; the more characterized and thus 'tangible' balance-sheet-assets.

"Informal" IP management of intellectual assets takes place through contracts and agreements, deals with attribution rather than inventorship or creatorship, and includes the notions of stewardship and branding.

It's this kind of "informal IP" pragmatic management we see most often associated with dissemination and uptake of agricultural research in developing countries. Contracts and agreements provide the main instrument to transfer, licence and manage ones intellectual assets/IP.

Softer skills

Of course you have the issue of contract enforcement if something goes wrong. But more often than not enforcement isn't a primary consideration. Rather the softer skills needed for "coming to agreement" and the role of drafting agreements, in the world

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of partnerships is where most energies are directed.

If your organisation is transferring materials (and with it institutional IP), an effective agreement clearly outlining roles, responsibilities and consequences goes a long way to preventing misappropriation or breaches of rights.

However, no contract will take the place of trust among partners. Trust and a willingness to work together through a project are the foundation for successful collaboration. Whilst agreements may, at first glance, fall short of the kind of protection one might associate with a patent — it is undoubtedly more effective in many situations where formal IP protection is neither understood nor enforceable.

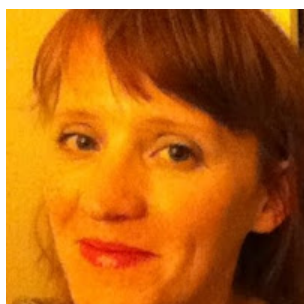
Access to correct and appropriate information is an ongoing challenge. Capacity to communicate, providing access to knowledge, networking, sharing of experiences, building capacity and access to professional advice and experience all play a role.

Many of our partners in developing countries are struggling to raise awareness as to why IP management is important and how IP management forms part of the bridge between researchers and users.

Having a network of knowledgeable professionals available for support and advice on how to implement effective IP management strategies in a developing country environment is invaluable.

We have also discovered that our National Partner Initiative (NPI) really helps all of us become more sophisticated in our thinking and our practice. For example, we are just beginning to tap market segmentation tools and branding as ways to distribute dependable quality products to resource-poor farmers.

Open Access



Kay Chapman

When thinking about access in terms of Open Access specifically it should be noted that articles from some 'big-name' journals — such as the US Proceedings of the National Academy of Sciences (PNAS), can be read and downloaded from servers in developing countries for free.

This is a policy that could be encouraged more widely to address part of the problem for access in developing countries — but that, and indeed OA from large publishers in general, doesn't fix the problem.

Journals from the developed world tend to deal with IP issues from the developed world. Unfortunately where communications infrastructure is weak, even Green OA can be problematic and here the informal IP management elements play a role — how can we transfer the skills necessary for ensuring successful data sharing in a particular project!

But this isn't going far enough when considering how to tackle IP management challenges in developing countries. We need to be active as well as reactive to the IP issues. One cannot segregate IP as a problem in itself; IP mechanisms that are, for the most part—business tools.

In agriculture there is a vast array of challenges; crop production challenges, marketing challenges, farmers' adoption and adaption challenges — and within all of these challenges IP likely has a role, and that IP management might take many forms.

Each of these challenges has a distinct context, from region to region, country to country, crop to crop. And this is just to identify the challenges before we look at doing something about it...

System Dynamic Modelling

In order to unravel the interlocking and interdependent factors in the role of IP management, both formal and informal IP, legal systems, trade issues, behavioural issues, CAS-IP has decided to employ a scientific technique called System Dynamic Modelling (SDM) to try to understand how these various pieces relate and fit together.

Sebastian Derwisch

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***Update: On August 26th 2016, the US government (Federal Trade Commission) announced that it has charged OMICS with making false claims, ...



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We are today seeing growing dissatisfaction with the pay-to-publish model for open access. As this requires authors (or their funders or ins...



This modelling can then form the basis for trying to ask broader questions such as “what can be done to improve IP management in a development context?”

To see some of our preliminary work in this area, please visit [this post](#) we made on this subject: The method of SDM can help by mapping out the relational factors in a system, zooming into the IP issues within a specific context and simulating how changes such as seed laws might affect that context. Our modelling research team is looking at innovation systems and the seed value chain.

It is a chain of activities in which R&D leads to production of new [germplasm](#), to production of seed, to farmers adopting new varieties and so on. If we have a situation in which quality seed delivery can be guaranteed by linking the distribution to a trademark, with or without a seed dealer network, what will this likely mean on farmers' ability to utilize the genetics in the new material?

By mapping these chains and the influences we can ask questions such as “how does farmers' adoption affect R&D of new seed varieties and vice-verse”

Range of tools

IP is just one of a variety of tools for improving the processes our stakeholders are dealing with. For example there could be participatory methods that are being used; there are other types of extension models such as [farmer-field schools](#), demonstration plots, identifying people for ‘first-adopter’ schemes, etc. to increase uptake and use of new materials.

IP is often looked at as a deterrent to wide distribution; patents are seen as a means to ‘tie things up’. However, in the developing country context, such a simplistic statement rarely reflects the situation.

We have found that it is better to step back from the bias that may exist and instead to look at all of the options, the context, and the facts of the situation — as much as possible, in order to try to help researchers and farmers interact.

For example, patents are rarely a problem – importation of patented crops, grown elsewhere, into the US is a rare example. Most poor farmers just don't have the wherewithal to grow export crops; we wish we had that problem!

About CAS

The CAS mission is to assist the Alliance Centres of the CGIAR, their partners and the CGIAR system as a whole in a comprehensive approach to management of Centre intellectual assets as public goods. To that end it contributes legal information to the CGIAR that benefits subsistence farmers in developing countries.

The overall goal/vision of CAS-IP is to enable access and use of CGIAR products for the benefit of the poor through effective IP and technology transfer management.

For more information on the Consultative Group on International Agriculture (CGIAR) click [here](#). A short film about CAS-IP can be accessed [here](#). The CAS blog can be accessed [here](#).

CAS can be contacted [here](#).

The authors

Dr Victoria Henson-Apollonio has been a senior scientist and manager at CAS-IP since its creation in 2000. She has many years practical experience as a patent agent and as a technology transfer (TT) and patent specialist at the [Argonne National Laboratory](#), and as a tenured member of the faculty of the Department of Biology at [Purdue University](#), USA.

Sebastian Derwisch holds both a Bachelor of Forestry and a Master of Tropical and International Forestry from the [University of Göttingen](#) in Germany. The main focus of his work has been [Humanitarian Use](#) exemptions and the use of [Traditional Knowledge](#) in the CGIAR. His current focus is on the development of a System Dynamics model for agricultural innovation in developing countries.

Kay Chapman, who joined CAS-IP in 2005, has over 10 years experience as a



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marketing communications manager. She is a business graduate and holds a postgraduate diploma in marketing from the UK's *Chartered Institute of Marketing*.

Posted by Richard Poynder at 07:06  

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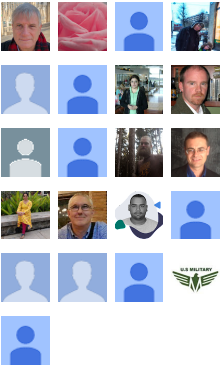
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